

February 9, 2009

Philip Guidice, Commissioner
Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

RE: Responsive Comments Addressing Emergency Regulations re: 225 CMR-14.00-Renewable Energy Portfolio Standard-RPS I, 225 CMR-15.00-Renewable Energy Portfolio Standard-RPS II and 225 CMR-16.00-Alternative Energy Portfolio Standard-APS.

Dear Commissioner Guidice:

I am writing on behalf of NSTAR Electric Company (“NSTAR Electric” or the “Company”) at the invitation of the Department of Energy Resources (“DOER”) regarding emergency regulations for the revised Renewable Energy Portfolio Standard (RPS) Class I, the new RPS Class II, and the new Alternative Energy Portfolio Standard (APS). DOER has invited parties to submit written comments on its emergency regulations. In this document NSTAR Electric will provide one set of responsive comments that address the emergency regulations generally.

It is important to reiterate the Company’s concern from its initial comments on the provisions of the Green Communities Act (the “GCA”) governing the emergency regulations that electric ratepayers in Massachusetts currently pay some of the highest electricity rates in the United States. Increasingly overburdened ratepayers are presently funding investments in renewable energy projects via the Massachusetts Renewable Energy Trust Fund and the former Renewable Portfolio Standard regulations. Significant additional requirements have compounded the burden on ratepayers resulting in financial hardship and potential job losses in Massachusetts. The Company strongly recommends that the DOER balance the Legislature’s goals of promoting renewable energy with the economic realities of high energy costs as it refines its RPS emergency regulations.

NSTAR Electric would like to comment on four principal areas as the DOER works to refine and implement the three emergency regulations.

- Capacity requirements
- Netting requirement
- Clarifying language re: the DOER’s intention for 2009 Basic Service requirements purchased prior to January 1, 2009.
- Clarifying language re: multiple renewable energy certificates (“RECs”) for one megawatt-hour (“MWh”) of electrical production

Capacity Requirements

The DOER's RPS I regulations include the following provisions governing capacity requirements in Section 14.05(1)(e).

- (e) Capacity Obligation. The Generation Unit's generating capacity is subject to the following obligations:
1. The amount of the generation capacity of the Generation Unit whose electrical energy output is claimed as RPS Class I Renewable Generation shall not be committed to any Control Area other than the ISO-NE Control Area unless such Generation Unit has entered into a Capacity Obligation in another Control Area before the start of the first available compliance year for the ISO-NE Forward Capacity Market, in which case this subsection shall apply upon the expiration of that Capacity Obligation.
 2. The Generation Unit Owner or Operator of a Non-intermittent Generation Unit shall commit to the ISO-NE Control Area the amount of the capacity of that Unit claimed as RPS Class I Renewable Generation by submitting by the applicable deadline a show of intent for the ISO-NE Forward Capacity Auction that is the earliest available for the Unit after the Owner or Operator has submitted a Statement of Qualification Application. The Owner or Operator of such unit must also clear the Forward Capacity Auction for which it has qualified, even if it must participate as a price taker. The requirements of this paragraph do not apply to Generation Units for which DOER has received an administratively complete Statement of Qualification Application prior to July 2, 2008.
 3. An RPS Class I Renewable Generation Unit that was deemed unqualified by the ISO-NE for participation in the ISO-NE Forward Capacity Market for technical reasons may commit capacity to another control area and may receive GIS Certificates for the energy sold into ISO-NE Control Area, subject to a determination by the Department.

It is NSTAR Electric's understanding from the proceedings leading to the promulgation of the emergency regulations that the capacity requirements in the GCA were aimed at newly qualified resources only. This conclusion is captured on page 8 of the DOER's "Imports Feasibility Study: Capacity Commitment and Netting Requirement."

"In sum, DOER has determined the best approach to achieve the intended purposes of subsection (c) is to:

- *Allow all generators that have submitted an SQ application prior to July 2, 2008 to maintain their eligibility under the current rules without taking further action."*

As currently drafted, the emergency rules do not accomplish this purpose. Specifically, the language that would seemingly achieve this objective is found in the Class I emergency regulations in Section 14.05(1)(e)(2), as follows:

“The requirements of this paragraph do not apply to Generation Units for which DOER has received an administratively complete Statement of Qualification Application prior to July 2, 2008.”

However, this provision is present at the end of a paragraph focusing on requirements for Non-intermittent generators and, therefore, neither covers all potentially affected generators (intermittents) nor achieves the findings of the Imports Feasibility Study. In its current form Section 14.05(1)(e)(1) would require previously qualified units to delist their capacity in their home ISO, thereby imposing the same requirement on previously qualified intermittent units as newly qualified intermittent units. Specifically, previously qualified units would still need to meet the requirements of subparagraph 1 of the section. The Company does not believe that it was the intent of the legislature to impose capacity requirements on intermittent generation units that were qualified prior to the enactment of the GCA.

The DOER is aware that NSTAR Electric entered into a 10-year power purchase agreement with the owners and operators of the Maple Ridge wind facility in New York on May 30, 2007, and the agreement was approved by the Department of Public Utilities in April 2008 (the “2007 Wind Contract”), two months before the enactment of the GCA on July 2, 2008. The Company contends that, as a matter of statutory interpretation, DOER may not retroactively apply the RPS and APS regulations to adversely affect NSTAR Electric’s contractual obligations under the 2007 Wind Contract. In general, all statutes are prospective in their operation, unless an intention that they shall be retrospective appears by necessary implication from their words, context or objects when considered in the light of the subject matter, the pre-existing state of the law and the effect upon existent rights, remedies and obligations.¹ Courts are skeptical about retroactive application because of the “recognition of the unfairness inherent in altering previously acquired rights.”² The Massachusetts Supreme Judicial court has found that “[u]nless statutory language is clear and unambiguous, an amendment affecting substantive rights will have prospective effect only.”³ Further, to the extent any ambiguity exists regarding legislative intent, the ambiguity “must be resolved against retroactivity.”⁴ NSTAR Electric believes that a plain reading of the GCA reveals that the

¹ Yates v. General Motors Acceptance Corporation, 356 Mass. 529, 531 (1969), quoting Hanscom v. Malden & Melrose Gas Light Co., 220 Mass. 1, 3 (1914).

² Fleet National Bank v. Commissioner of Revenue, 448 Mass. 441, 449 (2007) (citation omitted).

³ Mayor of Salem v. Warner Amex Cable Communications, 392 Mass. 663, 667 (1984), citing Hein-Werner Corp. v. Jackson Indus., Inc., 364 Mass. 523, 525 (1974). See Boston Gas Company v. Department of Public Utilities, 387 Mass. 531, 542 (1982) (refusing to retroactively apply statute absent clear legislative intent).

⁴ Fleet National Bank, 448 Mass. at 449.

legislature did not intend to make the provisions of the GCA with respect to the RPS or APS retroactive.

Accordingly, to remedy this issue, the Company suggests the following. The language referring to qualified resources in Section 14.05(1)(e)(2) referenced above should be removed from the section and inserted instead as a new Section 14.05(1)(e)(4) so that it reads as follows:

- (e) Capacity Obligation. The Generation Unit's generating capacity is subject to the following obligations:
1. The amount of the generation capacity of the Generation Unit whose electrical energy output is claimed as RPS Class I Renewable Generation shall not be committed to any Control Area other than the ISO-NE Control Area unless such Generation Unit has entered into a Capacity Obligation in another Control Area before the start of the first available compliance year for the ISO-NE Forward Capacity Market, in which case this subsection shall apply upon the expiration of that Capacity Obligation.
 2. The Generation Unit Owner or Operator of a Non-intermittent Generation Unit shall commit to the ISO-NE Control Area the amount of the capacity of that Unit claimed as RPS Class I Renewable Generation by submitting by the applicable deadline a show of intent for the ISO-NE Forward Capacity Auction that is the earliest available for the Unit after the Owner or Operator has submitted a Statement of Qualification Application. The Owner or Operator of such unit must also clear the Forward Capacity Auction for which it has qualified, even if it must participate as a price taker.
 3. An RPS Class I Renewable Generation Unit that was deemed unqualified by the ISO-NE for participation in the ISO-NE Forward Capacity Market for technical reasons may commit capacity to another control area and may receive GIS Certificates for the energy sold into ISO-NE Control Area, subject to a determination by the Department.
 4. *The requirements of Section 14.05(1)(e) do not apply to Generation Units for which DOER has received an administratively complete Statement of Qualification Application prior to July 2, 2008.*

Netting Requirements

The Department's "Imports Feasibility Study: Capacity Commitment and Netting Requirement" highlighted that the purpose of the Section 105 of the Green Communities Act was to prevent "green-washing" or "round-tripping," defined as: "...the process of importing renewable energy into ISO-NE to create RECs and then exporting that energy

or similar amount of energy out of ISO-NE.” The review of how to implement the netting requirement led to the conclusion that implementation would be difficult and best achieved by self-attestation of participants that they would not engage in green-washing. However, the language in the emergency regulations could be read to apply to transactions that go beyond green-washing such as the normal hourly balancing of generation and load from a load serving entity and, as such, the Company recommends that 225 CMR 14.05(5)(d) and 225 CMR 15.05(3)(d) be revised in order to clarify DOER’s intent. In addition, NSTAR Electric urges the DOER to limit the netting provisions to Class I and Class II resources and continues to posit that the inclusion of the term “affiliate” is too broad and should be eliminated.

We suggest the following changes to 225 CMR 14.05(5)(d):

(d) The Generation Unit Owner or Operator must provide an attestation in a form to be provided by the Department that it will not ~~itself or through any affiliate or other contracted party~~, engage in the process of importing RPS Class I Renewable Generation into the ISO-NE Control Area for the creation of RPS Class I Renewable GIS Certificates, and then simultaneously exporting that energy ~~or a similar quantity of other energy~~ out of the ISO-NE Control Area during the same hour. The provisions of this section shall not apply to energy transactions unrelated to imports for the purpose of creating RPS Class I Renewable GIS Certificates.

We suggest the following changes to 225 CMR 15.05(3)(d):

(d) The Generation Unit Owner or Operator must provide an attestation in a form to be provided by the Department that it will ~~not itself or through any affiliate or other contracted party~~, engage in the process of importing RPS Class II Renewable Generation into the ISO-NE Control Area for the creation of RPS Class II Renewable GIS Certificates, and then simultaneously exporting that energy ~~or a similar quantity of other energy~~ out of the ISO-NE Control Area during the same hour. The provisions of this section shall not apply to energy transactions unrelated to imports for the purpose of creating RPS Class II Renewable GIS Certificates.

Clarifying Language Re: DOER’s Intention for 2009 Basic Service Requirements Purchased Prior to January 1, 2009.

NSTAR Electric would like the DOER to clarify its intention regarding RPS obligations for Basic Service contracts entered into prior to January 1, 2009. Pursuant to a schedule approved by the Department of Public Utilities, prior to January 1, 2009, NSTAR Electric had contracted for 75 percent of its residential and commercial Basic Service obligation and 25 percent of its industrial Basic Service obligation. Given that the Massachusetts Class I certificate is not exactly equivalent to the former RPS Renewable Energy Certificate, the Company seeks clarification of what product the

DOER expects retail electricity suppliers to procure to meet 2009 load obligations contracted for prior to January 1, 2009.

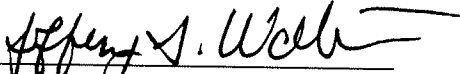
Clarifying Language Re: Multiple RECs for One MWh of Electrical Production

The APS emergency regulations ((1)2e) p.7) contain language apparently designed to allow interchangeability amongst Class I, Class II and APS RECs. It is NSTAR Electric's opinion that the language, as drafted, may allow double or triple counting of a single REC and potentially create multiple revenue streams from one MWh of production. Accordingly, the Company asks that the DOER ensure that the DOER certification process and GIS functionality is sufficient to preclude such actions.

Conclusion

NSTAR Electric continues to support the DOER's programs designed to promote renewable and alternative electric generation that are simple to administer and not overly burdensome on electric ratepayers. To that end, the Company hopes its comments will benefit the DOER in its efforts.

NSTAR ELECTRIC COMPANY

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